

Ordinance No. _____

An Ordinance concerning the regulation of Quick Service Facilities including Barista Stands.

Whereas, the City Council does find:

1. The City has seen a proliferation of crimes of a sexual nature occurring at bikini barista stands throughout the City, on its borders, and in Snohomish County. The City has reviewed this matter and found evidence relating to the adverse impacts of the conduct of bikini barista stands. This evidence relates to barista stands with employees dressing in a manner that is closely and customarily associated with adult entertainment or adult situations. Further this evidence indicates that businesses providing casual food services including such things as fast food restaurants, delis, food trucks and coffee stands (“Quick Service Facilities”) might easily transition to the bikini barista stand model;

2. The City has seen that the minimalistic nature of the clothing worn by baristas at these “bikini” stands lends itself to criminal conduct in that it can be quickly and simply partially or fully removed or adjusted but done in a manner that is not easy to detect unless someone is placed in the same proximity as the patron. Employees and owners of barista stands where this conduct occurs are making large sums of money from overtly sexual, lewd conduct, and prostitution. The nature of the Quick Service Facility has shown that it provides the opportunity for scantily clad baristas to easily engage in sexual conduct with customers;

3. The City has considered such evidence as compiled in the legislative record for this ordinance also including court cases, police records, memoranda and other information related to conduct of bikini barista stands;

4. The City finds that such information about bikini barista stands indicates that they create adverse secondary effects, including health, safety, economic, and aesthetic impacts, upon neighboring properties and the community as a whole, and that they have adverse impacts upon minors;

5. The City finds that this information about bikini barista stands is reasonably related to the regulation of bikini barista stands including Quick Service Facilities, and that this information also indicates that these establishments cause or tend to cause the same or similar adverse secondary effects;

6. The City finds that it has primarily used its lewd conduct and adult entertainment regulations and ordinances to regulate inappropriate conduct at these stands. This permitted the existence of bikini barista stands with a “bikini” constituting nothing more than pasties and a G-string. This approach, however, has resulted in a labor intensive enforcement effort by the City, while seemingly providing little or no deterrent to the bikini baristas' continued flashing and committing acts of prostitution. Further the City has found that the stand owner/operator simply terminates any barista caught by police and replaces with another who then continues with the same conduct further frustrating reasonable enforcement efforts;

7. The City finds that where stand owners/operators require their baristas to wear more clothing than bikinis, that the negative adverse impacts associated with bikini barista stands do not exist. The City further finds that these types of stands where more clothing is required can be very successful;

8. The City finds that courts have allowed cities to rely upon the experiences of other jurisdictions and have not required each jurisdiction regulating businesses to conduct their own studies. The City has decided to also rely upon such other experiences, as recognized by the courts, because it believes it may not have the time, experience and/or resources to adequately study these issues;

9. The City finds that experience in other regions of the country shows that that “bikini” business model can easily migrate to other types of quick service businesses if the City limited the dress requirements only to coffee stands. For example in Florida in the 90s, the popularity of bikini hot dog stands lead to similar bikini type businesses when local authorities enacted dress requirements for hot dog stands. More recently, the bikini business model has been used for food trucks. These other “bikini” businesses generate the same negative secondary effects. For example, a bikini hot dog vendor in New York was arrested for prostitution;

9. The City finds that all of this evidence confirms that bikini barista stands, due to their nature, have generated: a) increases in crime; b) increases in public sexual conduct; c) increases in the opportunity for the spread of sexually transmitted diseases; d) increases in corruption of minors; and e) adverse impacts upon the aesthetics and property values of the surrounding neighborhoods and businesses;

10. The City finds that imposing minimal dress standards requiring coverage of the torso and pubic and buttocks area for barista stands and Quick Service Facilities together with a licensing plan placing the responsibility for compliance primarily on the stand owner would lessen the negative adverse impacts related to bikini barista stands;

11. The City finds that it is not the intent of the City to suppress any protected rights of expression under the United States or Washington Constitutions, but to propose and enact content neutral legislation which addresses narrowly the negative adverse impacts associated with bikini barista stands while allowing these types of businesses adequate alternative channels for communication of protected expression;

12. The City finds that a licensing mechanism is needed to place more accountability and responsibility on the owners of businesses where the illegal conduct has occurred. Criminal provisions allow owners to avoid liability by pleading ignorance and game the system by creating a paper trail purporting to prohibit conduct while in fact encouraging that conduct by looking the other way and setting revenue expectations that implicitly encourage such conduct;

12. The City finds that this Ordinance bears a substantial relation to public health, safety or welfare and promotes the best long term interests of the Everett community; and

Whereas, the City Council does conclude:

1. The evidence provided is clearly reliable and demonstrates that bikini barista stands generate significant adverse secondary effects;

2. This evidence supports the conclusion that the bikini barista stand model is easily transitioned to other Quick Service Facilities type of business and, as such, it is appropriate and necessary to regulate these all the same;

3. The evidence supports the conclusion that the City has tried to regulate these businesses in a less restrictive manner which has proven unsuccessful and that imposing minimal dress requirements along with a licensing scheme placing responsibility for compliance primarily on the owner is reasonable and will both diminish the adverse secondary effects and improve the quality of living within the City; and

4. This ordinance is intended to protect Constitutional rights while addressing the adverse impacts these bikini barista stands have on the City;

Now, therefore, the City of Everett does ordain:

Section 1. Intent & Purpose

This Ordinance is intended to protect the general public health, safety and welfare of the citizenry of the city through the regulation of Quick Service Facilities. The regulations in this Ordinance are intended to prevent health and safety problems in and around Quick Service Facilities where employees work in various states of undress and to prevent dangerous and unlawful conduct in and around such locations. To accomplish these goals,

this Ordinance adopts certain minimum dress requirements and makes the business owners primarily responsible for enforcement.

Section 2. Definitions

A. “Dress Requirement” is clothing that covers “minimum body areas.” Such clothing shall not be see-through and must fit adequately so that undergarments and all minimum body areas remain covered at all times including when the wearer is sitting, standing, bending, reaching or performing other work duties. The City Clerk is authorized to issue regulations to ensure full compliance and provide diagrams to illustrate the Dress Requirement.

B. “Minimum body areas” means the upper and lower body (breast/pectorals, stomach, back below the shoulder blades, buttocks, top three inches of legs below the buttocks, pubic area and genitals).

C. “Quick-Service Facilities” (“Facility”) include coffee stands, fast food restaurants, delis, food trucks, and coffee shops, as well as businesses that provide drive-thru forms of food and/or beverage service, or are focused on quick service providing minimal or no table service. If an owner owns or operates more than one Quick Service Facility within the City, each Facility shall be treated as a separate business for the purpose of this Ordinance.

D. “Employee” means anyone working at a Quick Service Facility including the owner or any person who agrees or contracts with the owner of a Quick Service Facility to operate the business or work at the business, whether working as an employee or manager or other type of agent including subcontractors and independent contractors.

E. “Owner” means the person that owns the Quick Service Facility from which the business activity is conducted.

F. “Person” means any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, co-partnership, joint venture, club, company, joint stock company, business trust, corporation, limited liability company, association, society, or any group acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise.

Section 3. Dress requirement for all Quick Service Facilities

The dress of all employees, owners and operators of Quick Service Facilities must comply with the Dress Requirement. The owner is responsible to ensure that all employees comply with the Dress Requirement.

Section 4. Violations of the dress requirement and probationary license requirement

A. Unlawful Acts.

1. It shall be unlawful for the owner of a Quick Service Facility to serve customers (to operate a Facility) when the owner or any Employee is not in full compliance with the dress requirement. A violation of this requirement is a civil infraction.

2. It shall be unlawful for a person required to obtain a Quick Service Probationary License under this Ordinance to knowingly operate a Quick Service Facility without having a valid Quick Service Probationary License. A violation of this requirement shall be a gross misdemeanor.

B. Civil Infraction Violations including the Quick Service Probationary License Requirement.

Civil infractions for violating the Dress Requirement shall be issued against the owner of the Facility by Everett Police and/or Everett Code Enforcement.

1. First violation. The first infraction issued to a Quick Service Facility shall be a \$250 fine assessed against the owner. In addition, the owner shall be required to obtain and maintain a Quick Service Probationary License issued in accordance with Section 4(C) (I) of this Ordinance for five consecutive years following a violation in order to operate a Quick Service Facility at the location where the violation occurred.

2. Subsequent Violations. If an owner of a Quick Service Facility is operating with a Quick Service Probationary License and the owner or an employee violates the dress requirement, the infraction issued to an owner shall be a \$500 fine assessed against the owner. In addition, the owner shall be required to continue to have a Quick Service Probationary License for five years following the subsequent violation to operate any Quick Service Facility at the location where the subsequent violation occurred. If the owner receives two or more infractions while required to have a Quick Service Probationary License, those citations shall serve as ground for revoking the Quick Service Probationary License pursuant to Section 4(C).

3. Notice of infraction and of the Quick Service Probationary License requirement. An owner of a Quick Service Facility shall be deemed to have notice of the infraction and of the Quick Service Probationary License requirement if the citation and notice is either mailed to the owner via first class mail to the address provided in the owner's application for a City business license for the Quick Service Facility (provided if there is no application, then notice may be mailed to an address determined by the City to be the owner's) or by having it hand-delivered to the Quick Service Facility's location and

provided to the owner, or any employee who is 18 years or older. The notice shall identify the address of the Quick Service Facility, the violation of the Dress Requirement and the date and time the violation occurred.

4. Appeal of infraction. Any challenge of an infraction shall be in accordance with the rules in Washington State Infraction Rules for Courts of Limited Jurisdiction. Pursuant to Infraction Rule 2.4 any such appeal must be filed within 15 days of the service of the notice of infraction.

C. Probationary License Application, Denial, and Revocation.

1. Application for a Probation License Requirement. An owner of a Quick Service Facility required to obtain a Quick Service Probationary License shall apply for the license using the procedures in EMC 5.04.050, subject to the following additional requirements: (a) the applicant must affirm that the owner has adopted a mandatory dress code that complies with the dress requirement in Section 3 of this Ordinance and has posted that dress code in a conspicuous location on or within the Quick Service Facility where it can be easily viewed by the employees of the Quick Service Facility;

2. Denial. In addition to those bases for denial of a license in chapter 5.04 EMC, a Quick Service Probationary License may/will be denied if (a) the owner has previously had a Quick Service Probationary License revoked in the prior 5 years; or (b) has been convicted of operating a Quick Service Facility without having obtained a valid Quick Service Probationary License.

3. Revocation of Quick Service Probationary License for multiple violations. If an owner of a Quick Service Facility that has been required to obtain a Quick Service Probationary License receives two or more infractions for violating the dress requirement during the period the Owner is required to have a Quick Service Probationary License, those infractions shall be grounds for revoking the Quick Service Probationary License. This ground for revocation is in addition to those provided for in EMC 5.04.080. Any appeal from revocation shall be governed by Chapter 5.04 EMC, as supplemented by the requirements of Section 5 of this Ordinance.

D. Infraction does not limit authority to issue criminal citation. Nothing in this Ordinance shall preclude the City from filing criminal charges for any conduct which violates the laws of the City or the State, including but not limited laws prohibiting lewd conduct.

Section 5. License appeal from a Notice of Denial or Revocation of Quick Service Probationary

A. Appeal from Notice of Revocation or Notice of Denial. If the City Clerk determines that there are grounds for denying or revoking a Quick Service Probationary License pursuant to this Ordinance, the City shall institute the denial or revocation by the delivery of a Notice of Denial/Revocation pursuant to EMC 5.04.070-080. The denial or revocation shall become effective if the owner does not file an appeal within 10 days of receiving the Notice of Denial/Revocation as set forth in EMC 5.04.070-080. A party appealing a revocation cannot challenge the validity of any infraction that has become final before the date of the Notice of Denial/Revocation.

B. Content. Form and Procedure of Appeal.

The Notice shall be in writing and include at least the following:

1. A caption reading: "Appeal Notice of _____," giving the name of the appellant and the name of the Quick Service Facility;
2. A brief statement specifically identifying what is being appealed, together with any material facts claimed to support the contentions of the appellant;
3. A brief statement of the relief sought, and the reasons why the revocation or denial of a Quick Service Probationary License should be reversed, modified or otherwise set aside;
4. The current address of the owner/appellant;
5. Current contact information; and
6. A verification, by declaration under penalty of perjury, made by the owner/appellant as to the truth of the matters stated in the appeal.

C. Stay of Denial/Revocation Pending Appeal. A Quick Service Probationary License denial or revocation will be stayed and will not become effective upon the filing of a timely appeal and will remain stayed during the pendency of the appeal. The stay shall be lifted ten days after the appeal is denied or on the day a pending appeal is dismissed, whichever is sooner. In addition, the City may seek to have the stay lifted if an additional violation of the dress requirement occurs during the pendency of the appeal. The City shall make this request by filing a motion before the hearing examiner identifying the specifics of the new violation. The City's request shall be granted upon a finding by the hearing examiner that another violation of the Dress Requirement has occurred.

D. Waiver if No Appeal Filed. The failure to file a timely and complete Notice of Appeal constitutes a waiver of all rights to an appeal under this Ordinance.

Section 6. Expressive Activity.

If any employee of a Quick Service Facility engages in expressive activities at the Quick Service Facility while out of compliance with the dress requirement, such activities shall be considered “adult entertainment” as that term is defined in EMC 5.120.020(A), and the owner and employee must comply with all requirements of chapter 5.120 EMC, subject to the exceptions found in EMC 5.120.090.

Section 7. Codification.

Sections 1-6 of this Ordinance shall be codified in Title 5 EMC as a new Chapter entitled Quick Service Facility - Dress Requirement and shall be considered a special license for purposes of Title 5, EMC.

Section 8. Severability.

Should any section, subsection, paragraph, sentence, clause, phrase, or portion of this Ordinance or its application to any person or situation, be declared unconstitutional, invalid for any reason, or preempted by state or federal law or regulations, such decision shall not affect the validity of the remaining portions of this Ordinance or its application to any other persons or situations. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, paragraph, sentence, clause, phrase, or portion thereof irrespective of the fact that any one or more sections, subsections, paragraphs, sentences, clauses, phrases, or portions be declared unconstitutional, invalid, or preempted.

Section 9. General Duty.

It is expressly the purpose of this Ordinance to provide for and promote the health, safety, and welfare of the general public and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this Ordinance. It is the specific intent of this Ordinance that no provision or any term used in this Ordinance is intended to impose any duty whatsoever upon the City or any of its officers or employees. Nothing contained in this Ordinance is intended nor shall be construed to create or form the basis of any liability on the part of the City, or its officers, employees, or agents, for any injury or damage resulting from any action or inaction on the part of the City related in any manner to the enforcement of this Ordinance by its officers, employees, or agents.

Section 10. Savings.

The enactment of this Ordinance shall not affect any case, proceeding, appeal, or other matter currently pending in any court or in any way modify any right or liability, civil or criminal, which may be in existence on the effective date of this Ordinance.

Section 11. Corrections.

The Clerk is authorized to make necessary corrections to this Ordinance including, but not limited to, the correction of scrivener's/clerical errors, references, Ordinance numbering, section/subsection numbers, and any references thereto.

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